

FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re

Artimm, S.r.l.

Debtor.

Case No. LA 01-42911-SB

Section 304

**AMENDED OPINION
ON PROCEDURAL ISSUES**

Date: March 13, 2002
Time: 11:00 a.m.
Ctrm: 1575

I. Introduction

The duly appointed trustee of Artimm, S.r.l., an Italian corporation¹ that is a debtor in a bankruptcy case in Rome, brings this § 304² case to forestall a default judgment in a state court action in Los Angeles and to administer its United States affairs in connection with its ongoing Italian bankruptcy case. The court finds that the Italian trustee qualifies to bring this § 304 case and that the Italian automatic stay applies to all creditors in the United States. Alternatively, the court issues a stay of all debt enforcement actions in the United States against the debtor. At the same time, the court adopts procedures pursuant to which United States creditors may file claims in this § 304 case (as well as in Rome).

II. Relevant Facts

Dr. Sergio Lo Prato filed this ancillary bankruptcy case³ under § 304 on November 1, 2001.⁴ Dr. Lo Prato is the bankruptcy trustee for

¹S.r.l. is the acronym for "*società di responsabilità limitata*," which translated literally from Italian means "company with limited liability." An S.r.l. is typically a privately-held company and is a procedurally less stringent form of company than an Italian stock corporation, or Società per Azione (S.p.A.). An S.r.l. is somewhat analogous to an American limited liability company, and is similar to a French *société de responsabilité limitée* (S.R.L.) and a German *gesellschaft mit Beschränkter Haftung* (GmbH).

²Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (West 1999) and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

³This is not Artimm's first visit to this court. It filed a chapter 11 case in 1995 in this district, which was dismissed on the consent of the debtor a few weeks after filing.

⁴The petition is not clear as to which provisions of the Bankruptcy Code it wants to invoke. In addition to relief under § 304, it also seeks relief as an involuntary petition under § 303(b). If relief is granted under the latter section, the petitioner wants to proceed under chapter 7.

Artimm, S.r.l., an Italian corporation that is the subject of a bankruptcy case filed in Rome on May 15, 2001. Because of its pending bankruptcy, Artimm has not defended a case brought by Anna Dunn in Los Angeles County Superior Court, and Ms. Dunn contends that she is entitled to a default judgment against Artimm in that case.

In addition to the Dunn litigation, Artimm has other business in this judicial district. It has claims exceeding \$100,000 against Tristar Pictures, Inc. ("Tristar"), which is located in this district, and with which Artimm has been in negotiation for more than a year. Artimm apparently also has other assets in this district, including claims for royalty payments and other entitlements pursuant to various motion picture production agreements.

Tristar has filed a response to the petition, in which it admits that it owes royalties to Artimm under a 1992 distribution agreement. Tristar contends that the amount owing is unliquidated because it has deductions, offsets, defenses, recoupments and counterclaims against Artimm.

Artimm is also a partner in D&A, a partnership organized under the laws of the Netherlands Antilles, which has its headquarters in Curaçao in the Carribean.

Artimm has brought a motion for the imposition of a stay under § 304(b). In particular, it wants to stay the Dunn action in order to prevent the entry of a default judgment against it in Superior Court. Tristar does not object to the § 304 case going forward, or to the imposition of a stay under § 304(b)⁵ with the same substance as an automatic stay under § 362. Curiously, Artimm has also filed a document which purports to withdraw the request for relief under § 304, including the imposition of a stay thereunder.

Ms. Dunn contends that there is no evidence before the court that Dr. Lo Prato is the authorized representative of the Italian estate, and that there is no evidence to support any relief under § 304 at this time.

III. Analysis

For the present, the court treats this as a petition under § 304.

⁵Tristar and the trustee have stipulated on the record that their ongoing negotiations are not impeded by the stay issued by this court.

1 Three issues require resolution at this
2 preliminary stage of the case. The first issue is the
3 impact of the attempted withdrawal of the § 304
4 petition. The second issue is whether this case
5 qualifies to proceed under § 304. The third issue
6 is whether the Italian automatic stay applies in the
7 United States, and thus to Artimm's United States
8 creditors.

9 A. Withdrawal of § 304 Petition

7 The impact, if any, of the attempted
8 withdrawal of the § 304 petition turns on the nature
9 of a § 304 case.

9 1. Nature of a § 304 Case

10 A foreign representative⁶ may commence
11 a limited United States bankruptcy case under §
12 304 that is ancillary to a foreign proceeding⁷. The
13 purpose of a § 304 case is to assist a foreign court
14 in its administration of a foreign proceeding of
15 liquidation or reorganization.⁸

14 ⁶Section 101(24) provides that a "foreign
15 representative" means a "duly selected trustee,
16 administrator, or other representative of an estate
17 in a foreign proceeding."

17 ⁷Section 101(23) provides:

18 "foreign proceeding" means
19 proceeding, whether judicial or
20 administrative and whether or not
21 under bankruptcy law, in a
22 foreign country in which the
23 debtor's domicile, residence,
24 principal place of business, or
25 principal assets were located at
26 the commencement of such
27 proceeding, for the purpose of
28 liquidating an estate, adjusting
debts by composition, extension,
or discharge, or effecting a
reorganization

⁸See, e.g., *Armco Inc. v. North Atlantic
Ins. Co. (In re Bird)*, 229 B.R. 90, 94 (Bankr.
S.D.N.Y. 1999); *Universal Cas. & Sur. Co. v. Gee
(In re Gee)*, 53 B.R. 891, 896 (Bankr. S.D.N.Y.
1985); see also SAMUEL L. BUFFORD ET AL.,
INTERNATIONAL INSOLVENCY 25-52 (FJC 2001); S.A.

Congress enacted § 304 to permit a
foreign representative to file a case "to administer
assets located in this country, to prevent
dismemberment by local creditors of assets
located here, or for other appropriate relief." H.R.
REP. NO. 95-595, at 324 (1977), *reprinted in* 1978
U.S.C.C.A.N. 5963, 6287; S. REP. NO. 95-989, at
35 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787,
5821. The purpose of such a case is to provide a
more efficient and less costly alternative to a
plenary case that would duplicate the foreign
insolvency case. See *Cunard S.S. Co. v. Salen
Reefer Servs. AB*, 773 F.2d 452, 456 (2d Cir.
1985); *In re Axona Int'l Credit & Commerce Ltd.*,
88 B.R. 597, 607 (Bankr. S.D.N.Y. 1988).

One of the principal functions of the
domestic court in a § 304 case is to assist in the
efficient administration of the foreign proceeding
by preventing domestic creditors from pursuing or
executing on assets in the United States. See,
e.g., *Bird*, 229 B.R. at 96. Thus it is entirely
appropriate for Dr. Lo Prato to bring this case to
forestall Ms. Dunn's state court litigation.

There are several important differences
between a traditional bankruptcy case under the
Bankruptcy Code and a case under § 304. A case
under § 304 is not a full-scale bankruptcy case.
See *In re Culmer*, 25 B.R. 621, 633 (Bankr.
S.D.N.Y. 1982). It does not confer on the foreign
representative the full panoply of powers and
rights that are available to a trustee in a traditional
bankruptcy case under United States law. See,
e.g., *Vesta Fire Ins. Corp. v. New Cap
Reinsurance Corp.*, 244 B.R. 209, 213 (S.D.N.Y.
2000). However, the court has the power to apply
virtually any (or all) of the Bankruptcy Code
provisions in a particular § 304 case. See *In re
Rubin*, 160 B.R. 269, 274 n.3 (Bankr. S.D.N.Y.
1993); BUFFORD, *supra*, at 27.

Section 304 gives the bankruptcy court
significant discretion. See, e.g., *Vesta*, 244 B.R. at

Morales & B.A. Deutsch, *Bankruptcy Code Section
304 and U.S. Recognition of Foreign Bankruptcies:
The Tyranny of Comity*, 39 BUS. LAW. 1573 (1984);
B.J. Gallagher & J. Hartje, *The Effectiveness of §
304 In Achieving Efficient and Economic Equity in
Transactional Insolvency*, 1983 ANN. SURV. BANKR.
L. 1; Anne Norby Nielsen, *Note, Section 304 of the
Bankruptcy Code: Has it Fostered the
Development of an "International Bankruptcy
System?"* 22 COLUM. J. OF TRANSNAT'L L. 541
(1984).

213. However, that discretion typically points in favor of granting relief to § 304 petitioners. *Id.* Section 304 gives a court wide latitude to mold appropriate relief so that a foreign insolvency can proceed in a rational fashion with due regard for all of the varied and competing interests at issue. *Id.*

A § 304 case does not call for the bankruptcy court to make a determination of the foreign debtor's property interests, the timing of liquidation, or the manner in which the validity of creditors' claims is to be determined. *See, e.g., id.* at 221. The Italian court is in the best position to make these decisions in this case for the purpose of conserving estate resources and to maximizing the assets available for distribution. *See, e.g., Bird*, 229 B.R. at 96.

Section 304 is not intended to be the exclusive remedy available to a foreign representative. A foreign representative may also bring a traditional case under chapter 7 or chapter 11 in the United States. *See Cunard S.S. Co. v. Salen Reefer Servs. AB*, 773 F.2d 452, 455-56 (2d Cir. 1985); *Axona*, 88 B.R. at 607; *see also In re Florida Peach Corp.*, 63 B.R. 833, 839-40 (Bankr. M.D. Fla. 1986) (holding that the power of a Panamanian corporation, in liquidation in Panama, to file a chapter 11 case in the United States turns on United States law (pursuant to Panamanian choice of law rules), where the corporation has a commercial domicile in United States).

A chapter 7 or chapter 11 case is a better choice than a § 304 case if the business of the debtor in the United States is sufficiently complicated or substantial to require the full panoply of bankruptcy powers and rights for the proper administration of United States debts and assets. *See Brierley*, 145 B.R. 151, 167. Such a chapter 7 or chapter 11 case creates a bankruptcy estate in the United States. *See In re Axona Int'l Credit & Commerce Ltd.*, 88 B.R. 597, 606 (Bankr. S.D.N.Y. 1988). Furthermore, the automatic stay takes effect immediately upon the filing of the bankruptcy petition under chapter 7 or 11, even where it is related to a foreign case. *See* § 362(a).

2. Attempt to Withdraw Petition

To determine whether a petition under § 304 can be withdrawn, we begin with the language of the statute. Section 304(a) states:

A case ancillary to a foreign proceeding is commenced by the filing with the bankruptcy court of

a petition under this section by a foreign representative.

Section 304 designates such a filing as "a case." This term has important consequences under the Bankruptcy Code.

The language of § 304(a) is strikingly parallel to language used repeatedly in §§ 301, 302 and 303. Section 301(a) states in relevant part: "A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition" Similarly, § 302(a) provides in relevant part, "A joint case under a chapter of this title is commenced by the filing with the bankruptcy court of a single petition" Similarly yet again, § 303(b) provides in relevant part, "An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition"

Thus every petition under the Bankruptcy Code commences a bankruptcy "case." Such a case provides a vehicle for all other matters relating to that bankruptcy debtor to take place. The term "proceeding," in contrast, refers to a particular action raised or commenced within a case, including motions and adversary proceedings. *See generally* 2 COLLIER ON BANKRUPTCY ¶ 301.03 (Lawrence P. King, ed., 15th ed. 2002) (citing former Bankruptcy Rule 101). A proceeding in a bankruptcy case is the functional equivalent of a case in a non-bankruptcy court.

The designation of the fundamental bankruptcy unit as a "case" was a major change in terminology from the prior law, the Bankruptcy Act of 1898 ("the Act"), 11 U.S.C. §§ 1-703 (1898, as amended from time to time) (repealed 1978, effective September 30, 1979). Under the Act, the fundamental bankruptcy unit was a "proceeding." *See, e.g., id.* § 1(24) ("Petition' shall mean a document filed in a court of bankruptcy . . . initiating a proceeding under this Act"); § 2(a) ("The courts . . . of bankruptcy . . . are hereby invested with . . . jurisdiction . . . to exercise original jurisdiction in proceedings under this Act")

There is no procedure to terminate a case under the Bankruptcy Code by "withdrawing" the petition that commenced the case. A case that is not completed can only be terminated by dismissal. *See* §§ 305, 707, 930, 1112, 1208 and 1307.

Because a petition filed under § 304 commences a case, it likewise can only be terminated by dismissal. A party commences the procedure for dismissal by filing a motion or

1 request with the court. There is no such
2 procedure as a "withdrawal" of a petition. Artimm
3 may not bring this case to an end in this fashion.
Thus the purported withdrawal of the petition is
ineffective.

4 B. Qualifications for Relief

5 To qualify for relief under § 304, a
6 petitioner must show that a foreign proceeding, as
7 defined in § 101(23), is pending and that the party
8 filing the petition qualifies as a "foreign
representative" under § 101(24). See § 304(a);
see generally SAMUEL L. BUFFORD ET AL.,
INTERNATIONAL INSOLVENCY 44-45 (FJC 2001).

9 In this case there is no doubt that there is
a foreign insolvency proceeding pending in Rome.
Dr. Lo Prato has submitted a duly certified order
10 issued by the bankruptcy section of the Rome Civil
Court, dated July 26, 2001 in the case of Artimm
S.r.l., case no. 62975, which shows that Artimm
11 has a bankruptcy case pending in that court.

12 The qualifications of a foreign
representative are construed broadly under § 304.
13 See *In re Kingscroft Ins. Co.*, 138 B.R. 121, 124
(Bankr. S.D. Fla. 1992) (finding that board of
14 directors qualified as a foreign representative,
even though liquidators for the corporation had
15 been appointed in winding-up proceedings in
England and Bermuda).

16 In this case Dr. Lo Prato has shown that
he qualifies to bring a § 304 case here. The order
17 issued by the Italian court explicitly authorizes him
to file a § 304 case in Los Angeles ancillary to the
18 Italian bankruptcy case and to take all necessary
actions in this court.⁹ It further authorizes Dr. Lo
19 Prato to engage his attorneys herein, Paul Beck
and Albert S. Golbert, to represent him in this §
20 304 case. Ms. Dunn offers no evidence in
opposition to this evidence. The court finds that
21 this authorization is sufficient to show that Dr. Lo
Prato is a qualified foreign representative under §
22 101(24).

23 Ms. Dunn also contends that the petitioner
must show that the debtor has assets within this
24 district. There is *dictum* in *Koreag* to support this
point. See *In re Koreag, Controle et Revision S.A.*,

26 ⁹The order explicitly states that the court's
27 authorization to Dr. Lo Prato to proceed in
28 bankruptcy court in Los Angeles is granted
because of the default judgment sought by Anna
Dunn in the United States.

130 B.R. 705, 711 & n.3 (Bankr. S.D.N.Y. 1991)
(noting that there is a disagreement as to this
requirement), *vacated and remanded on other
grounds*, 961 F.2d 341 (2d Cir. 1992). However,
there is no mention of such a requirement in §
304.

The court finds that § 304 imposes no
requirement that the debtor have assets in the
jurisdiction where the § 304 case is filed, or
anywhere in the United States.¹⁰ See *Vesta*, 244
B.R. at 214; *Metzeler v. Bouchard Transp. Co. (In
re Metzeler)*, 78 B.R. 674, 678-80 (Bankr. S.D.N.Y.
1987); BUFFORD, *supra*, at 28. As the legislative
reports indicate, the seeking of "other appropriate
relief" is sufficient to support a § 304 case.¹¹ See
H.R. REP. NO. 95-595, at 324; S. REP. NO. 95-
989, at 35.

C. Automatic Stay

1. Automatic Stay Under United States Law

One of the distinctive features of a § 304
case is that filing such a case does not invoke an
automatic stay under § 362(a). See, e.g., *Goerg
v. Parungao (In re Goerg)*, 844 F.2d 1562, 1568
(11th Cir. 1988); *In re Koreag, Controle et
Revision*, 130 B.R. 705, 709-10 (Bankr. S.D.N.Y.
1991), *vacated and remanded on other grounds*,
961 F.2d 341 (2d Cir. 1992); *In re Axona Int'l
Credit & Commerce Ltd.*, 88 B.R. 597, 607 (Bankr.
S.D.N.Y. 1988); BUFFORD at 31.

¹⁰Nonetheless, it is undisputed that Tristar,
which is located in this district, owes a substantial,
though undetermined, sum to the debtor.

¹¹For example, a foreign administrator
may file a § 304 case to obtain a stay of litigation
in the United States and require the plaintiff to file
its claim in the foreign bankruptcy case. See
Haarhuis v. Kunnan Enterprise, 177 F.3d 1007
(D.C. Cir. 1999); *In re Kingscroft Insurance Co.*,
138 B.R. 121, 125-26 (Bankr. S.D. Fla. 1992); *In
re Gercke*, 122 B.R. 621, 625-26 (Bankr. D.D.C.
1991) (staying action, except to require debtor to
produce documents ordered in state court litigation
before § 304 case was filed). Such a procedure
may be important to protect the foreign bankruptcy
estate from a United States judgment that could be
given recognition in the foreign proceeding. See,
e.g., *In re Culmer*, 25 B.R. 621, 633 (Bankr.
S.D.N.Y. 1982).

1 The filing of any other kind of bankruptcy
2 case in the United States creates an estate that
3 includes all property of the debtor, wherever in the
4 world the property is located. See, e.g., *In re*
5 *Lykes Bros. S.S. Co.*, 191 B.R. 935, 936 (Bankr.
6 M.D. Fla. 1995). At the moment of the filing, this
7 property becomes property *in custodia legis* of the
8 bankruptcy court. *Id.*

9 The automatic stay under United States
10 bankruptcy law applies to all estate property
11 wherever it is located.¹² See, e.g., *Lykes Bros.*
12 *S.S. Co. v. Hanseatic Marine Serv. (In re Lykes*
13 *Bros. S.S. Co.)*, 207 B.R. 282, 287 (Bankr. M.D.
14 Fla. 1997); *Nakash v. Zur (In re Nakash)*, 190 B.R.
15 763, 768 (Bankr. S.D.N.Y. 1996). Thus the
16 automatic stay under United States law, applicable
17 in a bankruptcy case filed in the United States
18 (except for a case under § 304), would apply to an
19 Italian creditor who otherwise could file an action
20 in Italy against the United States debtor.

2. Automatic Stay Under Italian Law

21 Like the United States bankruptcy law,
22 Italian bankruptcy law provides for an automatic
23 stay of creditor collection activities upon the filing
24 of a bankruptcy case. Article 51 of the Italian law
25 states: "from the date of the declaration of
26 bankruptcy no individual lawsuit can be initiated or
27 continued against assets included in the
28 bankruptcy." See *Disciplina del fallimento, del*
concordato preventivo, dell'amministrazione
controllata e della liquidazione coatta
amministrativa, March 16, 1942, no. 267, art. 51,
Gazz. Uff. April 6, 1942, n.81 (as amended). The
property of the bankruptcy estate,¹³ under the

¹²The bankruptcy laws of most countries
provide for a similar stay or moratorium against
creditor collection activities outside of the
insolvency proceeding. See, e.g., *Lindner Fund,*
Inc. v. Polly Peck Int'l PLC, 143 B.R. 807, 809
(Bankr. S.D.N.Y. 1992) (describing automatic stay
under English reorganization law).

¹³Technically speaking, the Italian law
does not use a concept exactly like the concept of
"estate" under United States law. The Italian law
provides that the order of bankruptcy deprives the
owner of the right to administer or dispose of all
non-exempt assets as of that date, see *id.* Art. 42,
and requires the bankruptcy judge to take over
control of the assets, see *id.* Art. 84.

Italian law, includes all of a debtor's property on
the date of the declaration of bankruptcy.¹⁴ See *id.*
Art. 42.

The scope of the Italian bankruptcy estate
and the automatic stay under Italian law are
substantially similar to those under United States
law. As under United States law, property of the
estate under Italian bankruptcy law includes all
such property located within or outside of Italy.
Like the automatic stay under United States
bankruptcy law, the Italian automatic stay applies
to all property of the estate, whether in Italy or
abroad. See BUFFORD, *supra*, at 80 n.498;
Eberhard Schollmeyer, *The New European*
Convention on International Insolvency, 13 BANKR.
DEV. J. 421, 426 n.25 (1997) (stating that every EU
country claims worldwide effect for its automatic
stay and the application of its law to all estate
property, wherever in the world such property may
be located).

This interpretation is supported by the
enactment in 1995 of the Law on the Reform of
Private International Law. See C.c., Legge 31
maggio 1995, n. 218, Riforma del sistema italiano
di Diritto internazionale privato; Francesco
Salerno, *Legge di Reforma del Diritto*
Internazionale Privato e Giurisdizione
Fallimentare, 1998 RIV. DIR. INTER. PRIV. PROC. 5.
Although by its terms this law did not directly
address bankruptcy, in substance the law made a
fundamental change in Italy's approach to
international insolvencies from a "territorial"
approach to a "universal" approach.¹⁵ See *id.* at
20. This result derives from the provisions for the
recognition of foreign judgments and for staying
domestic proceedings pending the outcome of
related foreign proceedings. See Law 218/1995,
Arts. 7 and 64; see also Salerno, *supra*, at 20-21.

The court's conclusion as to the effect of
the Italian automatic stay is also supported by the
European Union Regulation on Insolvency

¹⁴For individuals, the Italian law provides
for certain exempt property. See *id.* Arts. 46 and
47.

¹⁵Under the "universal" view courts in all
countries should cooperate to promote the
treatment of an insolvency case, insofar as
possible, as a single case. See BUFFORD, *supra*,
at 3. Assets and creditors, under this view, should
be treated equally wherever they may be located.
See *id.*

1 Proceedings, Council regulation 1346/2000, on
2 insolvency proceedings, 2000 O.J. (L160) 1-18
3 ("the EU Regulation"). The EU Regulation applies
4 to all insolvency cases filed in the European Union
5 beginning today (May 31, 2002) (except with
6 respect to Denmark, which for historical reasons is
7 not subject to this EU Regulation).¹⁶ The EU
8 Regulation provides that, upon the opening of a
9 bankruptcy case in any EU country, the domestic
10 automatic stay in the forum country applies in all
11 other EU countries. Under this regulation, the
12 issuance of a declaration of bankruptcy in an
13 Italian bankruptcy case imposes the Italian
14 automatic stay throughout the European Union.
15 This regulation supports the court's determination
16 that the Italian automatic stay applies
17 extraterritorially, including in the United States.

18 It is particularly appropriate that a United
19 States bankruptcy court recognize the
20 extraterritorial reach of the Italian automatic stay in
21 this case. The United States cannot expect that
22 foreign courts will recognize the extraterritorial
23 reach of its own automatic stay under § 362 if its
24 courts do not equally recognize the impact in the
25 United States of a foreign automatic stay.

26 The court finds that the Italian automatic
27 stay prohibits Ms. Dunn from proceeding in Los
28 Angeles County Superior Court against Artimm.
Accordingly, Ms. Dunn's action in that court, and
all proceedings therein, are void from the date of
the declaration of bankruptcy in Artimm's
bankruptcy case in Rome. *See, e.g., Schwartz v.*
United States (In re Schwartz), 954 F.3d 569, 571
(9th Cir. 1992) (holding that any action in violation
of the automatic stay is void).

2. Stay under § 304

In the event that the law of the country
where the foreign proceeding is pending does not
provide a sufficient stay of proceedings in the
United States, § 304 provides a separate grant of
power to a United States court to issue a stay as to

¹⁶The treaties of accession pursuant to
which Great Britain, Ireland and Denmark became
members of the European Union made a
regulation such as the one here at issue
inapplicable in those countries unless they
specifically choose to be subject thereto. While
Great Britain and Ireland have decided to become
subject to this regulation, Denmark has not as of
now made this decision.

proceedings in the United States that may
jeopardize the orderly reorganization or liquidation
of the foreign estate.

a. Powers of the Court

The powers of the court in a case under §
304 are specified in § 304(b), which provides:

Subject to the provisions of subsection (c)
of this section, if a party in interest does
not timely controvert the petition, or after
trial, the court may--

- (1) enjoin the commencement or
continuation of--
 - (A) any action against--
 - (i) a debtor with
respect to
property
involved in such
foreign
proceeding; or
 - (ii) such property; or
 - (B) the enforcement of any
judgment against the
debtor with respect to
such property, or any act
or the commencement or
continuation of any
judicial proceeding to
create or enforce a lien
against the property of
such estate;
- (2) order turnover of the property of
such estate, or the proceeds of
such property, to such foreign
representative; or
- (3) order other appropriate relief.

This provision gives the court the power to issue
an injunction that has the same effect as an
automatic stay (except that it is not automatic: it
goes into effect when it is issued by the court).
See, e.g., In re Schimmelpenninck, 183 F.3d 347,
361-62 (5th Cir. 1999); *see also In re Singer*, 205
B.R. 355, 357 (Bankr. S.D.N.Y. 1997) (reversing
the bankruptcy court's denial of such an injunction
against unknown creditors).

United States law provides generally that
the filing of a bankruptcy case (apart from a case
under § 304) imposes an automatic stay on

1 virtually all creditor collection activities.¹⁷ See §
2 362. While such a stay is not automatic in a § 304
3 case, this provision contemplates that the court will
4 promptly address the issue of a stay if the § 304
5 petition is not timely controverted. In this case, no
6 opposition to the petition has been timely filed.

7 **b. Exercise of § 304 Powers**

8 The exercise of the powers in § 304(b) is
9 constrained by § 304(c), which provides:

10 In determining whether to grant
11 relief under subsection (b) of this
12 section, the court shall be guided
13 by what will best assure an
14 economical and expeditious
15 administration of such estate,
16 consistent with--

- 17 (1) just treatment of all
18 holders of claims against
19 or interests in such
20 estate;
- 21 (2) protection of claim holders in the
22 United States against prejudice
23 and inconvenience in the
24 processing of claims in such
25 foreign proceeding;
- 26 (3) prevention of preferential or
27 fraudulent dispositions of property
28 of such estate;
- (4) distribution of proceeds of such
estate substantially in accordance
with the order prescribed by this
title;
- (5) comity; and
- (6) if appropriate, the provision of an
opportunity for a fresh start for
the individual that such foreign
proceeding concerns.

29 The court finds that these requirements are
30 satisfied with respect to granting a stay in this
31 case.

32 By far the most important factor in §
33 304(c) is comity. However, comity is not at issue

34 ¹⁷Furthermore, before the stay became
35 automatic under United States law in 1973, it was
36 customary to grant such stays *ex parte*
37 immediately upon the commencement of a case.
38 See 1A COLLIER ON BANKRUPTCY ¶ 11.08[2] (14th
ed. 1978).

in this case. Comity comes into play only when
there is a true conflict between United States law
and that of a foreign jurisdiction, and an
accommodation between the laws is required.
See, e.g., *In re Xacur*, 216 B.R. 187, 195-96
(Bankr. S.D. Tex. 1997) (finding no conflict
between requirements of laws of United States
and Mexico in that case); see also *Underwood v.*
Hilliard (In re Rimsat Ltd.), 98 F.3d 956, 963 (7th
Cir. 1996); *Gitlin v. Société Générale (In re*
Maxwell Communication Corp.), 93 F.3d 1036
1049-50 (2d Cir. 1996) (finding that a transaction
would be an avoidable preference under United
States law but not under English law, which was
applicable to the case).

While there is a conflict between the
requirements of Italian bankruptcy law, especially
the automatic stay thereunder, and the California
state court procedures under which Ms. Dunn is
proceeding, the court finds that there is no true
conflict on this point between the requirements of
United States law and those of Italian law in this
case. The filing of a domestic bankruptcy case
would impose an automatic stay on any
proceeding by Ms. Dunn in state court. There is
no conflict in finding that Italian law imposes a
similar stay. Thus comity is not at issue.

Ms. Dunn raises one issue with respect to
§ 304(c): she is concerned that she would have
few if any rights in the Italian bankruptcy case, and
that her rights there would not equal her rights in a
bankruptcy case in the United States. While she
offers no evidence to support her concern,¹⁸ the
court finds that procedures should be crafted in
this § 304 case for her protection, and for the
orderly administration of her claim. Accordingly,
the court authorizes Ms. Dunn and any other
United States creditor to file a claim in this case
under the same procedure as if this were a
domestic chapter 7 case.¹⁹ As provided under

¹⁸The court does not perceive that the
Italian law provides any foundation for Ms. Dunn's
concerns. That law provides for the filing of a
claim by a creditor. See Art. 93. It also provides
for the payment of creditors *pro rata* after the
payment of administrative expenses and priority
creditors. See Art. 111.

¹⁹The court assumes that Ms. Dunn and
any other United States creditors will file their
claims in the Artimm bankruptcy case in Rome to
protect their interests there.

1 United States bankruptcy law, such a claim will be
2 presumed allowed until an objection is filed. See
3 § 502(a). If an objection is brought, the court will
4 decide the objection as a contested matter in due
5 course. Alternatively, any party may remove to
6 this court the case pending in state court, at which
7 time the court would consider it a claim subject to
8 the same procedures set forth herein. The court
9 finds that this procedure provides such protection
10 as Ms. Dunn may properly claim against prejudice
11 and inconvenience in the processing of her claim
12 in the Italian bankruptcy case.

13 The court finds that the remaining factors
14 in § 304(c) are satisfied in this case. The court
15 finds that the issuance of a stay in this court is
16 appropriate to promote the just treatment of all
17 holders of claims against or interests in the
18 bankruptcy estate in the case in Rome, and
19 especially the just treatment of the claimants who
20 have filed their claims in that court. The court
21 further finds that the distribution of assets under
22 Italian law is substantially in accordance with the
23 order prescribed under United States law. See
24 Italian law Art. 111. No issue of preferential or
25 fraudulent dispositions of property of the estate
26 has been brought to the court's attention in this
27 case. Finally, a fresh start is not at issue, because
28 this case involves a corporation rather than an
individual. Thus all of the requirements of § 304(c)
are met.

In consequence, the court issues a stay
against all creditors that enjoins :

- (1) the commencement or continuation of any action or judicial proceeding in the United States against Artimm or its trustee or to create or enforce a lien against property in the United States that is subject to the Italian bankruptcy case, or against such property; and
- (2) the enforcement of any judgment against Artimm or its trustee with respect to such property.

IV. Conclusion

The court concludes that Dr. Sergio Lo Prato has shown that, as the bankruptcy trustee for Artimm, he is the duly authorized foreign representative for the foreign proceeding for Artimm which is pending in Rome, Italy. Accordingly, he has properly filed a § 304 case in this court as a case ancillary to the case in Rome,

which may not be dismissed without an appropriate motion to the court.

The court further finds that the automatic stay in the Italian case applies to creditors in the United States. In particular, the court finds that the case filed by Ms. Dunn in Los Angeles County Superior Court violates that stay. In consequence, the proceedings in Superior Court after Artimm's bankruptcy filing on May 15, 2001 are void. Alternatively, the court issues a stay order in this § 304 case that stays all creditors, including Ms. Dunn, from proceeding in a United States court against Artimm or its trustee.

At the same time, the court adopts a procedure for Ms. Dunn and any other United States creditor to file a claim in this court, as they would be permitted to do if this were a domestic chapter 7 case. Any such claim will be processed in the same fashion as if this were a chapter 7 case.

Dated: May 31, 2002


Samuel L. Bufford
United States Bankruptcy Judge

CERTIFICATE OF MAILING

I certify that a true copy of this **AMENDED OPINION ON PROCEDURAL ISSUES**
was mailed on MAY 31 2002 to the parties listed below:

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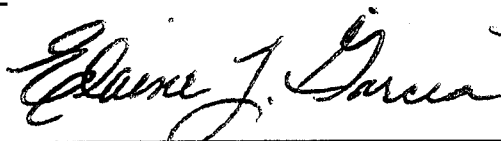
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